

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**UNITED STATES OF AMERICA**

v.

**CASE NO. 2:16cr36**

**GERALD ANDREW DARBY,**

**Defendant.**

**JOINT MOTION TO DESIGNATE CASE COMPLEX LITIGATION  
PURSUANT TO 18 U.S.C. § 3161(h)(7)(B)(ii)**

Comes now the defendant and the United States by and through undersigned counsel, and moves this court to designate the above-styled case as complex litigation pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii). That section provides that a trial may be set beyond the statutory 70 day limit if “the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.” In support of this Motion, the United States offers the following:

- A. The case before the court involves novel questions of both law and fact that relate to the use of the network investigative technique (“NIT”).
- B. The parties have submitted numerous and lengthy briefs on a significant number of issues that are the subject of litigation in multiple federal districts, resulting in a body of persuasive law that changes on a regular basis.
- C. The technical information at issue in this case is the subject of disagreement between the parties and resolution by the court will involve the review and testimony of expert witnesses.

D. In addition to technical issues surrounding the NIT, there are significant novel legal issues surrounding the United States' claim of privilege related to the NIT.

Given the novelty of the factual basis for the case, the significant and novel legal issues presented by this factual scenario, the existence of on-going litigation in multiple districts related to this case, and the need for expert evaluation of the technical items in this case, the parties submit that this case is complex and the Speedy Trial date should be extended so as to allow for adequate preparation for pretrial and trial proceedings.

Respectfully submitted,

GERALD A. DARBY

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**CERTIFICATE OF SERVICE**

I certify that on the 7<sup>th</sup> day of June, 2016, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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